IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15/02/2005

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THE HON'BLE MR.JUSTICE V.KANAGARAJ

CRL RC.No.1776 OF 2004
AND CRL RC NOS. 1777 TO 1780 OF 2004
CRL.M.P.Nos.10641, 10645, 10647, 10649 AND 10650 OF 2004.

1. M/s.Blue Blends (India) Limited,
JBF House, Old Post Office Lane,
Kalbadevi Road,
Mumbai-400 002.

2. Anand Arya ... Petitioners in all
the above Crl.R.Cs.

-Vs-

Thirumagal Mills Limited,
Katpadi Road,
Gudiyatham,
rep.by its Accounts Manager
S.Ramamurthy ... Respondent in all
the above Crl.R.Cs.

Criminal Revision Cases filed under Section 397 r/w.401 Cr.P.C.
praying for the reliefs as stated therein.

For petitioners : Mr.S.Sridhar

For respondent : Mr.Ashok Kumar,
Senior Counsel for
M/s.A.Sasidharan &
C.D.Johnson

:COMMON ORDER

All the above Criminal Revision Cases are filed by one and the same parties as against the same respondent against the orders all dated 6.7.2004 respectively made in Crl.M.P.No.1535 of 2004 in C.C.No.192 of 1998, Crl.M.P.No.1534 of 2004 in C.C.No.187 of 1998, Crl.M.P.No.15 31 of 2004 in C.C.No.188 of 1998, Crl.M.P.No.1527 of 2004 in C.C.No.1 91 of 1998 and Crl.M.P.No.1530 of 2004 in C.C.No.190 of 1998 by the Court of Judicial Magistrate, Gudiyatham.

2. On a perusal of the materials placed on record and upon hearing

the learned counsel for the petitioners and the learned senior counsel for the respondent, it comes to be known that the respondent herein has lodged all the above mentioned criminal cases as against the petitioners herein for the offence under Section 138 of the Negotiable Instruments Act. During pendency of the said cases, the revision petitioners herein who are accused in all the above cases have filed the above mentioned criminal miscellaneous petitions before the Court below seeking to re-call the process issued in the cases and discharge them from the cases on ground that the respondent/complainant has received all the amounts due from the revision petitioners and also acknowledged the same by issuing receipts and that the accused and the complainant entered into a compromise.

3. This claim of the accused was rebutted by the complainant on ground that the points raised by the accused are all the matters to be decided during the course of trial; that the payments received from the accused were credited to the accounts of the accused maintained by the complainant and no receipt has been issued referring to the cases pending before the Court; that the accused made the payment knowing full well that the same were made against the outstanding payments payable to the complainant on account of the yarn supplied by the complainant which include bank changes, belated interest payments as per the contract of supply of goods; that even all the receipts issued by the complainant specifically states that the payments were received towards account balance and not towards the cheque amounts involved in the cases, the petitions filed by the accused are without merit and are liable to be dismissed.

4. Based on the above pleadings, the Court below would conduct separate enquiries into the matters and would dismiss all the petitions on ground that the points raised by the accused are all points to be determined at the time of trial of the cases. It is only aggrieved against the said findings of the Court below, the petitioners/accused have come forward to file the above criminal revision cases on certain grounds as brought forth in the grounds of revision petitions.

5. During arguments, the learned counsel for the petitioners would submit that the entire amount in dispute has been paid by the accused to the complainant and the respondent/complainant can, no more, enforce the liability; that the court below has failed to note that if the complainant is desirous of prosecuting the complaints further, he ought not to have received the payments to the tune of Rs.81,09,278/= over and above the amount of Rs.75 lakhs in respect of alleged dishonoured cheques in all the complaints and the respondent having received the huge amount from the petitioners, in order to harass and humiliate the petitioners, is not withdrawing the complaints; that the Court below has failed to note that the Amendment Act 2002 to Chapter XVII Negotiable Instruments Act 1881 through Sec.147 provides that ' notwithstanding anything contained in the Code of Criminal Procedure 1973, every offence punishable under this Act shall be compoundable' and the said amendment applied to the present complaint filed against the petitioner also. On such grounds, the petitioners would pray for the reliefs as stated supra.

6. On the contrary, on the part of the learned senior counsel appearing on behalf of the respondent/complainant, besides reiterating the contents of the counter filed before the Court below, he would submit that

since the payment of the amounts as alleged by the petitioners/accused is itself in dispute, the Court below has rightly concluded that the trial is the answer for all the issues to be settled after adducing evidence on both sides. At this stage, the learned senior counsel for the respondent would cite a judgment of the Honourable Apex Court delivered in ADALAT PRASAD vs. ROOPLAL JINDAL AND OTHERS reported in 2004 (4) CTC 608 wherein the Honourable Apex Court has held:

"... after taking cognizance of the complaint and examining the complainant and the witnesses if he (the Magistrate) is satisfied that there is sufficient ground to proceed with the complaint, he can issue process by way of summons under Section 204 of the Code. Therefore, what is necessary or a condition precedent for issuing process under Section 204 is the satisfaction of the Magistrate either by examination of the complainant and the witnesses or by the inquiry contemplated under Section 202 that there is sufficient ground for proceeding with the complaint hence issue the process under Section 204 of the Code. In none of these stages the Code has provided for hearing the summoned accused, for obvious reasons because this is only a preliminary stage and the stage of hearing of the accused would only arise at a subsequent stage provided for in the latter provision in the Code. It is true as held by this Court in Mathew's case (1992 (1) SCC 217) before issuance of summons, the Magistrate should be satisfied that there is sufficient ground for proceeding with the complaint but that satisfaction is to be arrived at by the inquiry conducted by him as contemplated under Sections 200 and 202, and the only stage of dismissal of the complaint arises under Section 203 of the Code at which stage the accused has no role to play therefore the question of the accused on receipt of summons approaching the Court and making an application for dismissal of the complaint under Section 203 of the code for a reconsideration of the material available on record is impermissible because by then Section 203 is already over and the Magistrate has proceeded further to Section 204 stage."

7. The learned senior counsel for the respondent would also cite yet another judgment of the Honourable Apex Court delivered in SUBRAMANIUM SETHURAMAN vs. STATE OF MAHARASHTRA AND ANOTHER reported in 2004 (4) CTC 613 wherein the Honourable Apex Court has held :

"Recalling process after recording of plea of accused is not permitted in summons case and remedy if any can be by way of petition under Section 482 of the Code of Criminal Procedure"

On such arguments, the learned senior counsel for the respondent would pray to dismiss all the above criminal revision cases.

8. A perusal of the orders passed by the Court below would show that the Court below, having conducted enquiries into all the matters and tracing all the facts and circumstances of the cases and having framed its own point for consideration in all the matters to the effect that 'whether the petition for review and recall of process issued against the accused could be allowed?' and relying on various propositions of law delivered by the upper forums of law on the subject, would hold that a prima facie case has been made out on

the part of the complainant and that when the offence is complete, the subsequent negotiation that the accused would settle the claim, would, in no way, frustrate the operation of law and the onus is on the accused to establish that the said amounts were given towards the discharge of liability in respect of the cheque amount, which has not been done by the accused and that even though the payment has been made, the subsequent payments would not absolve the accused of the liability of criminal offence. The Court below would further hold that the points raised by the accused cannot be decided at this stage and the entire matter could be considered only during the course of trial as the entire facts of the case would be revealed only through a full trial. The Court below would further observe that the accused have not produced any reliable document in support of their case and would ultimately dismiss all the petitions filed by the accused.

9. Either in the conclusions arrived at by the court below or the manner in which the same have been arrived at, this Court of revision does not find any illegality or perversity in approach or patent error of law and since the points raised on the part of the accused are the points to be decided after a thorough and full trial, in which event both the parties could exhaust their remedies, the Court below has correctly arrived at the conclusion to dismiss all the above petitions. The judgments cited on the part of the learned senior counsel for the respondent would squarely apply to the facts of the cases in hand. Therefore, the interference of this Court sought to be made into the well considered and merited orders passed by the Court below is neither necessary nor warranted and hence all the above criminal revision cases are liable only to be dismissed and hence the following order:

In result,
(i) all the above criminal revision cases do not merit acceptance and are liable only to be dismissed and are dismissed accordingly.
(ii) The orders all dated 6.7.2004 respectively made in Crl.M.P.No.15 35 of 2004 in C.C.No.192 of 1998, Crl.M.P.No.1534 of 2004 in C.C.No.187 of 1998, Crl.M.P.No.1531 of 2004 in C.C.No.188 of 1998, Crl.M.P. No.1527 of 2004 in C.C.No.191 of 1998 and Crl.M.P.No.1530 of 2004 in C.C.No.190 of 1998 by the Court of Judicial Magistrate, Gudiyatham are confirmed.

Consequently, Crl.M.P.Nos.10641, 10645, 10647, 10649 and 10650 of 20 04 are also dismissed.

Index: Yes

Internet: Yes

Rao

To

The Judicial Magistrate,
Gudiyatham.